

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-5301

September Term 2009

1:09-cv-01304-RBW

Filed On: December 17, 2009

David Kissi,

Appellant

v.

Thomas Simmons, Special Agent, U.S.
Department of Justice/FBI, et al.,

Appellees

BEFORE: Sentelle, Chief Judge, and Garland and Brown, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by the appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order filed July 31, 2009 be affirmed. Appellant's collateral attack on his conviction and sentence must be pursued through a motion to vacate his sentence pursuant to 28 U.S.C. § 2255 filed in the court in which he was convicted and sentenced – the United States District Court for the Southern District of West Virginia. Although “the savings clause of [28 U.S.C.] § 2255 provides that if the ‘remedy by motion is inadequate or ineffective to test the legality of his detention,’ the prisoner may utilize [28 U.S.C.] § 2241 to collaterally attack the legality of his conviction or sentence,” In re Smith, 285 F.3d 6, 8 (D.C. Cir. 2002) (quoting 28 U.S.C. § 2255(e)), appellant has not demonstrated that his remedy was “inadequate or ineffective.” In any event, the appropriate forum for a habeas petition is the district in which appellant was confined. See id.; Chatman-Bey v. Thornburgh, 864 F.2d 804, 806 n.1 (D.C. Cir. 1988) (en banc).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam